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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SRI International

File: B-237779

Date: March 22, 1990

Patricia A. Meagher, Esq., Rogers, Joseph, O'Donnell & Quinn, for the protester.
Marc Stec, Esq., Bogle & Gates, for Sterling Software, Inc., an interested party.
Francis L. Carroll, Lincoln Laboratory, Massachusetts Institute of Technology, for the prime contractor.
George P. Kinsey, Esq., Federal Aviation Administration, Department of Transportation, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

Protest challenging the propriety of a subcontract awarded by a government prime contractor, designated as a federal contract research center, is dismissed since it was not made "by or for the government" where the prime contractor, which is performing research and development services, is not operating or managing a government facility or otherwise providing large scale management services.

DECISION

SRI International protests the award of a subcontract, under request for proposals (RFP) No. 44809, by Lincoln Laboratory, Massachusetts Institute of Technology (MIT), to Sterling Software, Inc., to perform site surveys for the Terminal Doppler Weather Radar (TDWR) system at 27 airports within the United States.

We dismiss the protest, since this subcontract protest is not for consideration under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10) (1989).

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MIT has a cost reimbursement contract with the Electronic Systems Division, Department of the Air Force, for on-going research and development pertinent to the national defense with a particular emphasis on advanced electronics. In order to carry out this mission, MIT and the Air Force established Lincoln Laboratory in 1951 as a federal contract research center (FCRC) with the Air Force as the Laboratory's primary sponsor. A FCRC is one type of the approximately 36 federally funded research and development centers (FFRDC).

Since 1971, Lincoln Laboratory, pursuant to an interagency agreement between the Air Force and the Federal Aviation Administration (FAA), Department of Transportation, has provided the FAA with engineering and technical support for various electronics programs. Currently, Lincoln Laboratory is providing support for the FAA's weather radar programs, including the TDWR program.^{1/} Specifically, the Laboratory is required to: (1) furnish a Doppler weather radar test facility and computer system that has the capability of emulating the characteristics of the weather radar systems being procured by the FAA; (2) develop meteorological algorithms for use in the weather radar programs; (3) collect and analyze data in a variety of meteorological conditions to determine the characteristics of hazardous weather phenomena; and (4) develop siting criteria for the TDWR system and perform the necessary coverage and clutter analysis to permit the selection of TDWR sites.

The RFP issued by Lincoln Laboratory sought the performance of field surveys, and related work, at 27 designated airports to select candidate sites for the installation of TDWR systems. The RFP informed offerors that the subcontractor selection would be made by Lincoln Laboratory and that the subcontract work would be performed under the direction of the Laboratory. Proposals were received from SRI and Sterling, and award made to Sterling. This protest followed.

Lincoln Laboratory argues that the protest should be dismissed because it involves a subcontract award which was

^{1/} The TDWR system will be used to detect hazardous weather phenomena such as windshears. The TDWR system is currently being produced by Raytheon Company under contract with FAA and will be installed by Raytheon after FAA furnishes the site selection information.

not made "by or for the government." In this regard, under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(1) (Supp. IV 1986), our Office has jurisdiction to decide protests involving contract solicitations and awards by federal agencies. We have interpreted this provision as authorizing us to decide protests of subcontract solicitations and awards only when the subcontract is "by or for the government." 4 C.F.R. § 21.3(m)(10).

SRI contends that the Laboratory, as an FCRC, has a "special relationship" with the government and was acting "for" the government in awarding the subcontract and, therefore, we should consider this protest. SRI also argues that, while the FAA did not select the subcontractor, that the Laboratory was in effect a "conduit" for the agency.

A subcontract is considered to be "by or for the government" where the prime contractor principally provides large-scale management services to the government and, as a result, generally has ongoing purchasing responsibility. In effect, the prime contractor acts as a middleman or a conduit between the government and the subcontractor. Am. Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Elec. Corp., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145, otherwise provides large scale management services in a government facility, Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ 44, serves as an agency's construction manager, C-E Air Preheater Co., Inc., B-194119, Sept. 14, 1979, 79-2 CPD ¶ 197, or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency. Univ. of Michigan, et al., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. Except in these limited circumstances in which the prime contractor is basically acting as the government's agent, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered "by or for the government." ToxCo, Inc., 68 Comp. Gen. 635 (1989), 89-2 CPD ¶ 170.

SRI contends that Lincoln Laboratory's subcontract with Sterling was "for" the government because Lincoln Laboratory, as an FCRC, has a special relationship with the government which "carrie[d] with it duties and responsibilities beyond that of an independent contractor." In this regard, SRI states that Lincoln Laboratory is funded by the government, performs its research duties in rent-free, government furnished buildings at Hanscom Air Force Base, and receives rent-free use of government furnished property.

We recognize that there is a unique relationship between FFRDCs, including FCRCs, and the government. FFRDCs are largely funded by the government to perform, analyze, support and manage research and development activities pursuant to a long-term agreement with a sponsoring agency. See OFPP Policy Letter 84-1, reprinted in, 49 Fed. Reg. 14,464 (1984). There is no prescribed organizational structure for FFRDCs. They "can range from traditional contractor owned/contractor operated or government owned/contractor operated (GOCO) organizational structures to various degrees of contractor/government control and ownership." Id. Because of the variety of relationships between federal agencies and FFRDCs, we cannot say that an FFRDC such as Lincoln Laboratory was acting "for" the government simply by virtue of its FCRC status. We must review the specific contractual relationship between the government and the FFRDC prime contractor to determine whether the contractor is operating or managing a government facility or is otherwise providing large scale management services. See Ocean Enters., Ltd., 65 Comp. Gen. 585 (1986), 86-1 CPD ¶ 479, aff'd, 65 Comp. Gen. 683 (1986), 86-2 CPD ¶ 10; Optimum Sys., Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD ¶ 166.

Under Lincoln Laboratory's prime contract with the Air Force, Lincoln Laboratory is not operating or managing a government facility or otherwise providing large scale management services; it is simply a research contractor that has been provided with government base support. Lincoln Laboratory's primary duty under the contract is to provide research and development support for approved programs. In this regard, Lincoln Laboratory is responsible for formulating its own research and development programs, which are submitted to the government for approval. Other than minor incidental services, there is no requirement that the Laboratory operate or manage the base facilities it uses. To the contrary, the Lincoln Laboratory contract enumerates the larger variety of facilities and services to be provided by the Air Force under the contract.

SRI argues that Lincoln Laboratory's relationship with the government is similar to that of the Department of Energy (DOE) with its sponsored FFRDCs and that we consider subcontract protests involving DOE's research laboratories. See, e.g., Northwest Digital Sys., B-232959.2, Mar. 2, 1989, 89-1 CPD ¶ 221; Westinghouse Elec. Corp., B-227091, supra; Nickum and Spaulding Assocs., Inc., B-222468, Jun. 10, 1986, 86-1 CPD ¶ 542; and Rosemount, Inc., B-218121, May 16, 1985, 85-1 CPD ¶ 556. However, DOE (as did its predecessors, the Atomic Energy Commission and Energy Research and Development

Administration) has a unique historic relationship with the prime contractors operating and managing its government-owned laboratories. See Optimum Sys., Inc., 54 Comp. Gen. 767, supra; Probe Sys., Inc., B-182236, Apr. 25, 1975, 75-1 CPD ¶ 260. In each of these cases, unlike Lincoln Laboratory's, the DOE contractor is responsible for managing and operating the pertinent DOE laboratory, rather than simply using government furnished facilities.

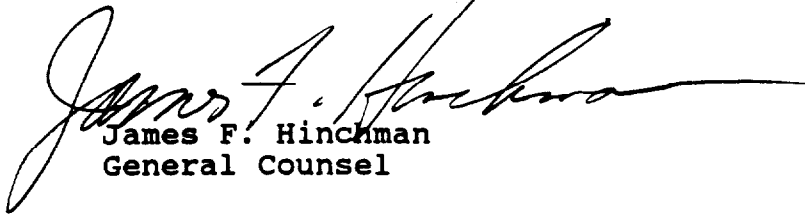
SRI argues, citing Univ. of Michigan, et al., 66 Comp. Gen. 538, supra, that Lincoln Laboratory is a mere conduit for the FAA because the Laboratory's role in the subcontract procurement is limited to an administrative and consulting function. In Univ. of Michigan, we found that we had jurisdiction over a subcontract protest where the subcontractor was actually selected by a government-controlled evaluation team. Here, SRI admits that Sterling was not selected by the government but by Lincoln Laboratory. Furthermore, Lincoln Laboratory's role in this subcontract is more than merely administrative; this subcontract work needed to be integrated by Lincoln Laboratory with its other functions to accomplish the FAA work. Thus, we do not find Univ. of Michigan controlling in this case.

Finally, SRI argues that Lincoln Laboratory in awarding a subcontract to Sterling must be acting for the government because the Laboratory, as an FCRC, is limited to performing only research and development work and that the work to be performed for the TDWR program is not research or development. SRI contends that since the Laboratory could not perform the work directly that therefore the subcontract to perform site surveys must be "for" the government.

We do not agree that Lincoln Laboratory is precluded, as an FCRC, from performing the program support and analysis required under FAA's interagency agreement with the Air Force. Lincoln Laboratory's charter provides that, in carrying out its mission of research and development pertinent to the national defense, the Laboratory, among other things, could provide technical advice and consultation in areas of its demonstrated competence to military services and other government agencies. Furthermore, the Lincoln Laboratory's prime contract provides that the Laboratory's research and development program extends from the fundamental investigation in science through the development of new electronic devices and components to the design, development and field demonstrations of prototype systems embodying the new technology.

Lincoln Laboratory, under the interagency agreement between the FAA and the Air Force, is required to perform technical studies and assessments of hardware and software in support of FAA's weather radar programs, including the TDWR system. As a part of this support, the Laboratory is required to conduct field tests and data analysis in a variety of meteorological conditions to determine the characteristics of hazardous weather phenomena and will "develop siting criteria for the TDWR and perform the necessary coverage and clutter analysis to permit the selection of TDWR." We think that the FAA work being performed by the Laboratory is the kind of technical advice and consultation contemplated by its charter and contract.

The protest is dismissed.



James F. Hinchman
General Counsel